

National Credit Union Administration

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account will be subordinate to all other claims on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

8. *Prompt Corrective Action.* Under certain net worth classifications (see 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be), the NCUA Board may prohibit [name of credit union] from paying principal, dividends or interest on its uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest will continue to accrue under the terms of the account to the extent permitted by law.

ACKNOWLEDGED AND AGREED TO this ____ day of [month and year] by:

[name of investor's official]
[title of official]
[name of investor]
[address and phone number of investor]
[investor's tax identification number]

[name of credit union official]
[title of official]

[61 FR 3790, Feb. 2, 1996, as amended at 61 FR 50695, 50697, Sept. 27, 1996; 64 FR 72270, Dec. 27, 1999; 65 FR 21131, Apr. 20, 2000; 71 FR 4238, Jan. 26, 2006; 73 FR 71912, Nov. 26, 2008; 75 FR 7342, Feb. 19, 2010; 75 FR 47172, Aug. 5, 2010; 75 FR 57843, Sept. 23, 2010; 76 FR 36979, June 24, 2011; 76 FR 80227, Dec. 23, 2011; 78 FR 4032, Jan. 18, 2013]

EFFECTIVE DATE NOTE: At 80 FR 66706, Oct. 29, 2015, § 701.34 was amended by: 1. in paragraph (b)(12), removing the words “§§ 702.204(b)(11), 702.304(b) and 702.305(b)” and adding in their place the words “part 702”; 2. in paragraph (d)(1)(i), removing the words “net worth” and adding in their place the word “capital”; and 3. in the appendix to § 701.34, amending the paragraph beginning “8. Prompt Corrective Action” by removing the words “net worth classifications (see 12 CFR 702.204(b)(11), 702.304(b) and 702.305(b), as the case may be)” and adding in their place the words “capital classifications (see 12 CFR part 702)”, effective January 1, 2019.

§ 701.35 Share, share draft, and share certificate accounts.

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in section 117 of the Act (12 U.S.C. 1763).

(b) A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all adver-

tising, disclosures, or agreements, whether written or oral

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

(d) For purposes of this section, “state law” means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[47 FR 17979, Apr. 27, 1982, as amended at 50 FR 4637, Feb. 1, 1985; 59 FR 50445, Sept. 27, 1993]

§ 701.36 Federal credit union occupancy, planning, and disposal of acquired and abandoned premises.

(a) *Scope.* Section 107(4) of the Federal Credit Union Act (12 U.S.C. 1757(4)) authorizes a federal credit union to purchase, hold, and dispose of property necessary or incidental to its operations. This section interprets and implements that provision by establishing occupancy, planning, and disposal requirements for acquired and abandoned premises, and by prohibiting certain transactions. This section applies only to federal credit unions.

(b) *Definitions.* For purposes of this section:

Abandoned premises means real property previously used to transact credit union business but no longer used for that purpose. It also means real property originally acquired for future credit union expansion but no longer intended for that purpose.

Immediate family member means a spouse or other family member living in the same household.

Partially occupy means occupation, on a full-time basis, of a portion of the premises that is:

(1) Consistent with the federal credit union's usage plan for the premises;

(2) Significant enough that the federal credit union is deriving practical

utility from the occupied portion, relative to the scope of the usage plan; and

(3) Sufficient to show that the federal credit union will fully occupy the premises within a reasonable time.

Premises means any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the federal credit union transacts or will transact business.

Senior management employee means the federal credit union's chief executive officer, any assistant chief executive officers, and the chief financial officer. For example, these individuals typically hold the title of President or Treasurer/Manager, Assistant President, Vice President or Assistant Treasurer/Manager, and Comptroller.

Unimproved land or unimproved real property means:

(1) Raw land or land without development, significant buildings, structures, or site preparation;

(2) Land that has never had improvements;

(3) Land that was improved at one time but has functionally reverted to its unimproved state; or

(4) Land that has been improved, but the improvements serve no purpose for the federal credit union's planned use of the property.

(c) *Premises not currently used to transact credit union business.* (1) If a federal credit union acquires premises for future expansion and does not fully occupy them within one year, it must have a board resolution in place by the end of that year with definitive plans for full occupation. Premises are fully occupied when the federal credit union (or the federal credit union and a credit union service organization or a vendor) uses the entire space on a full-time basis. Credit union service organizations and vendors must use the space primarily to support the federal credit union or to serve the federal credit union's members. The federal credit union must make its plans for full occupation available to NCUA upon request.

(2) If a federal credit union acquires premises for future expansion, including unimproved land or unimproved real property, it must partially occupy them within a reasonable period, but

no later than six years after the date of acquisition. NCUA may waive the partial occupation requirements. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(3) A federal credit union must make diligent efforts to dispose of abandoned premises and any other real property it does not intend to use in transacting business. The federal credit union must seek fair market value for the property, and record its efforts to dispose of abandoned premises. After premises have been abandoned for four years, the federal credit union must publicly advertise the property for sale. The federal credit union must complete the sale within five years of abandonment, unless NCUA waives this requirement. To seek a waiver, a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. The Regional Director will provide the federal credit union a written response, either approving or disapproving the request. The Regional Director's decision will be based on safety and soundness considerations.

(d) *Prohibited transactions.* (1) A federal credit union must not acquire, or lease for one year or longer, premises from any of the following, unless NCUA waives this prohibition:

(i) A member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual;

(ii) A corporation in which a member of the federal credit union's board of directors, credit committee, supervisory committee, or senior management, or an immediate family member of such individual, is an officer or director, or has a stock interest of 10 percent or more; or

(iii) A partnership, limited liability company, or other entity in which a member of the federal credit union's board of directors, credit committee,

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supervisory committee, or senior management, or an immediate family member of such individual, is a general partner, or a limited partner or entity member with an interest of 10 percent or more.

(2) A federal credit union must not lease for one year or longer premises from any of its employees if the employee is directly involved in acquiring premises, unless the federal credit union's board of directors determines the employee's involvement is not a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this section must be conducted at arm's length and in the interest of the federal credit union.

(4) To seek a waiver from any of the prohibitions in this paragraph (d), a federal credit union must submit a written request to its Regional Office and fully explain why it needs the waiver. Within 45 days of the receipt of the waiver request or all necessary documentation, whichever is later, the Regional Director will provide the federal credit union a written response, either approving or disapproving its request. The Regional Director's decision will be based on safety and soundness considerations and a determination as to whether a conflict of interest exists.

[78 FR 57252, Sept. 18, 2013, as amended at 80 FR 45850, Aug. 3, 2015]

§ 701.37 Treasury tax and loan depositories; depositories and financial agents of the Government.

(a) *Definitions.* (1) *Treasury Tax and Loan (TT&L) Remittance Account* means a nondividend-paying account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations under United States Treasury Department regulations.

(2) *TT&L Note Account* means an account subject to the right of immediate call, evidencing funds held by depositories electing the note option under United States Treasury Department regulations.

(3) *Treasury General Account* means an account, established under United States Treasury Department regulations, in which a zero balance may be

maintained and from which the entire balance may be withdrawn by the depositor immediately under all circumstances except closure of the credit union.

(4) *U.S. Treasury Time Deposit—Open Account* means a nondividend-bearing account, established under United States Treasury Department regulations, which generally may not be withdrawn until the expiration of 14 days after the date of the United States Treasury Department's written notice of intent to withdraw.

(b) Subject to regulation of the United States Treasury Department, a Federal credit union may serve as a Treasury tax and loan depository, a depository of Federal taxes, a depository of public money, and a financial agent of the United States Government. In serving in these capacities, a Federal credit union may maintain the accounts defined in subsection (a), pledge collateral, and perform the services described under United States Treasury Department regulations for institutions acting in these capacities.

(c) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and a U.S. Treasury Time Deposit—Open Account shall be considered deposits of public funds. Funds held in a TT&L Remittance Account and a TT&L Note Account shall be added together and insured up to a maximum of \$250,000 in the aggregate. Funds held in a Treasury General Account and a U.S. Treasury Time Deposit—Open Account shall be added together and insured up to a maximum of \$250,000 in the aggregate.

(d) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and U.S. Treasury Time Deposit—Open Account are not subject to the 60-day notice requirement of Article III, section 5(a) of the Federal Credit Union Bylaws.

[54 FR 18471, May 1, 1989, as amended at 78 FR 4030, Jan. 18, 2013]

§ 701.38 Borrowed funds from natural persons.

(a) Federal credit unions may borrow from a natural person, provided:

(1) The borrowing is evidenced by a signed promissory note which sets